

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 753 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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IBRAHIM N MALEK

Versus

HON'BLE DISTRICT JUDGE

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Appearance:

MR VIMAL PATEL for Petitioner

MR SP HASURKAR for Respondent No. 1

MR KAMAL MEHTA AGP with MS SB TRIVEDI

for Respondent No. 2, 3

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/09/98

ORAL JUDGEMENT

Heard Mr.Patel for the petitioner and Mr.Kamal  
Mehta with Ms.Trivedi for the respondents. RULE on the  
petition is made returnable forthwith. Mr.Mehta waives  
service of Rule on behalf of the respondents.  
Affidavit-in-reply is already filed.

2. The petitioner is a peon who was working at the relevant time in the establishment of the Civil Judge (Junior Division) at Khambhat. He joined in the services on 29th September 1986. In the year 1996, it was reported that he remained absent for a period of 17 days and, therefore, a chargesheet was issued to him. After departmental inquiry, his services were terminated. Being aggrieved by that judgment and order, this petition has been filed.

3. Mr. Patel for the petitioner submits that the chargesheet itself shows that the petitioner was not well and, therefore, he had not remained present. He had sent a medical report to that effect. This was slightly prior to the subsequent period of absence i.e. from 16.12.1996 to 1.1.1997. Mr. Patel submits that, assuming that the petitioner was so absent, this period of 19 days should not have led to termination of his services. If supporting judgment is required, in the case of UNION OF INDIA v. GIRIRAJ SHARMA reported in AIR 1994 Supreme Court 215, which was a case for overstaying the period of leave by 12 days, the Supreme Court had noted that, though the incumbent admitted the fact of his absence, he had explained the circumstances in which it was inevitable for him to remain absent from duty. The Supreme Court, in the circumstances, observed: "In that view of the matter, the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission."

4. Mr. Mehta has drawn my attention to the fact that, in the year 1994 also, the petitioner had remained absent for quite some time and for different periods from 18th April 1994 till 24th October 1994. An inquiry was held against him and an order of censure came to be passed against him on that occasion. It was, therefore, that the learned disciplinary authority which held the inquiry has stated in paragraph 11 that: "In the interest of justice, punishment in departmental enquiry must be such that other staff members will not do any act of misconduct or carelessness in discharge of their duty." It is, therefore, that the disciplinary authority came to the conclusion that the only alternative left for the authority was to remove the delinquent from the service.

5. In my view, the approach of the learned disciplinary authority is erroneous. It is true that, in the year 1994, certain absence has been recorded for

which the petitioner was censured. The period of absence in that earlier proceeding was upto 24th October 1994. Thereafter, for a period of two years, there has not been any allegation against the petitioner and it is only after 27th November 1996 that he has remained absent which he has explained by pointing out that he was suffering from malaria. These facts have got to be considered. The learned disciplinary authority has also observed in paragraph 9 that the delinquent does not appear to be serious about his job. With due respect, this observation is not correct. The petitioner has put in nearly ten years of service and except for whatever has happened in the year 1994, this is the only instance when he has been absent and that also, as stated above, on account of attack of malaria which he was suffering. Mr.Mehta states that that was an afterthought inasmuch as on service of notice only that explanation has been given. Even so, it is supported by medical certificate and, looking to the fact that the petitioner is a class IV employee, one cannot expect much strictness in compliance with rules on his behalf.

6. In the circumstances, in my view, as far as the petitioner is concerned, a minor penalty would be a proper penalty as suggested by the Supreme Court in its aforesaid judgment. On a query to Mr.Patel, he submits that denial of one increment would be proper. Mr.Mehta is fair enough to state that on this aspect he would leave it to the court. Minor penalties are described in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The minor penalties are (i) Censure (ii) withholding of increments or promotion (iii) recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders. In the instant case, the petitioner has already been censured once. Hence, the proper punishment would be to deny one increment with permanent effect. In the circumstances, the impugned order is interfered with and set aside. The respondents are directed to reinstate the petitioner with continuity of service though without any back wages. The petitioner will, however, be reinstated by denying him one increment with permanent effect. The respondents may as well issue a letter of warning to the petitioner that he should desist from remaining absent and should be careful in remaining present in future. The respondents will see to it that the petitioner is reinstated by the first working day of October 1998. Rule is made absolute accordingly with no order as to costs.